

## DEPARTMENT OF CORPORATIONS

Sacramento, California



IN REPLY REFER TO:

FILE NO: OP 6547CFL

THIS SPECIFIC RULING IS ISSUED BY THE COMMISSIONER OF CORPORATIONS PURSUANT TO SECTION 22754 OF THE CALIFORNIA FINANCE LENDERS LAW. IT IS APPLICABLE ONLY TO THE SPECIFIC FACTUAL SITUATION IDENTIFIED IN THE REQUEST FOR RULING, AND MAY NOT BE RELIED UPON IN CONNECTION WITH ANY OTHER FACTUAL SITUATION.

Mr. J. Douglas Irmen  
Attorney at Law  
Shughart, Thomson & Kilroy  
Twelve Wyandotte Plaza  
120 West 12th Street  
Kansas City, MO 64105-1929

Re: Pioneer Military Lending, Inc.

Dear Mr. Irmen:

Your letters dated October 24, 1995, as supplemented by your letter dated December 19, 1995, have been considered by the Commissioner of Corporations. These letters are being treated as a request for a specific ruling under the California Finance Lenders Law (the "Law"). Your letters raise the question of whether Pioneer Military Lending, Inc., a Nebraska Corporation, ("Pioneer") will be required to obtain a license under the Law when engaging in the business of lending money to United States military personnel stationed in California.

Specifically, you represent that Pioneer proposes to make loans only to active duty, non-resident military personnel stationed at military bases located in the state of California under the Pioneer "Readi-Loan" program. Pioneer's presence in California will be limited to a particular location which is in the immediate vicinity of a United States military facility. Only non-resident military personnel assigned to the facility will be able to obtain loans from Pioneer. That is, loans will be made only to active duty military personnel who are not residents of the state of California.

You further represent that under the "Readi-Loan" program the loan application review and approval process will be made in the state of Nebraska, not at the California location. Pioneer will not take real property as collateral for any of its loans, moreover, as the vast majority of loans made by Pioneer are

unsecured, and the remaining loans are secured by household goods or, occasionally, an automobile. Under its corporate policy, Pioneer does not institute any litigation to enforce payments against borrowers who are in default while the borrower remains in the military service. In very limited circumstances, Pioneer has brought lawsuits to collect outstanding loans from individuals, but only subsequent to their departure from the military.

In determining whether a prospective borrower is a "non-resident", Pioneer relies primarily on the State of Legal Residence Certificate, Form DD 2058, which is the form used by the military to determine the state of legal residence for income tax purposes. In the case of military personnel, the legal residence or domicile is the permanent home to which the military personnel has the intent of returning to, as declared on the Form DD 2058, notwithstanding duty assignments when a member of the military services. Furthermore, The Soldier's and Sailor's Civil Relief Act protects the military pay of the military personnel from income taxes of the state in which the military personnel resides by reason of military orders, unless that place is also the legal residence or domicile of the military personnel. As provided for on the Form DD 2058, in addition to the physical presence and specified actions within the state, military personnel must exhibit the simultaneous intent or expression of making the new state one's permanent home and abandonment of the old state of legal residence to have the new state determined to be the new legal residence. Absent this action by an active duty member of the military services, the state of domicile reflected on the Form DD 2058 controls.

Finally, you contend that the State of California is precluded from licensing and regulating Pioneer by virtue of the Commerce Clause of the United States Constitution. That is, state regulation of Pioneer would constitute an undue burden upon interstate commerce in violation of the Commerce Clause where Pioneer's presence in this state is limited to a particular location in the immediate vicinity of a federal military facility, and only active duty, non-resident military personnel stationed at the military facility will be able to obtain loans through this location. You cite the decision of the U.S. Court of Appeals for the Eighth Circuit in Pioneer Military Lending, Inc. v. Earl L. Manning, 2 F.3d 280 (8th Cir. 1993), for support of this contention.

Article III, Section 3.5 of the California Constitution prohibits the Commissioner from declaring a statute unconstitutional unless an appellate court has determined the statute to be unconstitutional. However, the Commissioner may consult relevant decisions and is free to interpret statutes in the course of

discharging his or her statutory duties. See Regents of University of California v. Public Employment Relations Bd., 139 Cal. App. 3d 1037 (1983) rev'd on other grounds 108 S. Ct. 1404 (1988). Accordingly, this is a specific ruling under the Law and not a determination by the Commissioner of the constitutionality of the Law on its face or as applied.

Section 22100 of the Financial Code provides that "No person shall engage in the business of a finance lender or broker without obtaining a license from the Commissioner." Sections 22009 and 22004 define "finance lender" and "broker", respectively. From the facts presented, it is clear that Pioneer meets the definition of "finance lender" under the Law.

In People v. Fairfax Family Fund, Inc., 235 C.A. 2d 881 (1964), a case decided under the former California Small Loan Law but which has been cited as authority in jurisdictional questions under subsequent finance company lending laws, the question of the Commissioner's jurisdiction was discussed as it relates to an out-of-state lender making loans through the mail to Californians. In this case, the court concluded that the Commerce Clause of the United States Constitution did not preclude the State of California from enacting and enforcing legislation designed to protect California residents. In our view, the important element in the California court's statement is with respect to the protection of California residents.

In Pioneer's case, no loans will be made to California residents. Since only active duty, non-resident personnel stationed at military facilities located in California will be eligible for loans under Pioneer's plan of business, it is difficult to discern what the interest is of the State of California so as to require licensure of Pioneer under the Law. Accordingly, it is our opinion, based on the unique set of facts represented to us with respect to Pioneer's program for the making and collection of loans, that Pioneer will not be engaging in the business of a finance lender in this state under the Law when it makes loans to active duty, non-resident military personnel stationed at military facilities located in this state under the "Readi-Loan" program.

We express no opinion with respect to the application of any other provision of California law (e.g., the requirement that Pioneer qualify as a foreign corporation or the application of Article XV of the California Constitution).

This opinion is a specific ruling within the meaning of  
Section 22754 of the Financial Code.

Dated: March 25, 1996  
Sacramento, California

By order of  
BRIAN A. THOMPSON  
Acting Commissioner of Corporations

A handwritten signature in dark ink, appearing to read 'W. Kenefick', is written over a horizontal line.

WILLIAM KENEFICK  
Assistant Commissioner  
(916) 322-3553